

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1296 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GULAMMEHMAD MUSABHAI

Versus

CHAUDASH TANU MARATHA

Appearance:

PARTY-IN-PERSON for Petitioners

MR CB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. The petitioners are the original plaintiffs of
H.R.P. Suit No.2467 of 1981. The said suit was filed by
the plaintiffs for getting decree for possession from the
original defendants, i.e. one Chaudasthanu Maratha and

Shivabhai Ranchhodbhai. Said Shivabhai died and his heirs are brought on record of the case.

2. The aforesaid suit was filed by the plaintiffs on the ground that there is a Chawl, bearing Municipal Census No.27 and City Survey No.143, that the defendant No.1 was given part of the said property, which is a hut, at a monthly rent of Rs.9/-, that the defendant No.1 was not paying rent regularly and he was in arrears from 1.3.1980. It is also the case of the plaintiffs that the defendant No.1 has sub-let the superstructure over the aforesaid open land, i.e. hut in question, to defendant No.2 and, therefore, a registered notice was given on 4.4.1981, terminating the tenancy of defendant No.1 and also for demanding arrears of rent. The suit was accordingly filed for getting decree for possession on the ground of arrears of rent as well as on the ground of sub-letting.

3. The defendant No.1 did not file any written statement in the suit. The defendant No.2, i.e. the so-called sub-tenant, filed his Written Statement at Exhibit 18. It was stated by defendant No.2 that since the plaintiffs had failed to pay the municipal taxes to the Corporation, the said property was auctioned by the Corporation and the Corporation has purchased the suit property and that the Municipal Corporation had given notice to all the tenants of the properties, which include the suit premises also and that the rent was paid to the Municipal Corporation. According to the defendant No.2, the plaintiffs, having no title over the suit property, could not have filed the suit as the property vested with the Municipal Corporation.

4. The trial court framed various issues at Exhibit 20 and after recording the evidence, came to the conclusion that the Municipal Corporation has purchased the suit property and, therefore, the plaintiff has no right to file the suit. It was also found that the plaintiffs have failed to prove that the open land was given to defendant No.1 and that the defendant No.1 had constructed superstructure over the same. The trial court accordingly dismissed the aforesaid suit of the plaintiff. The aforesaid order of the trial court was challenged by the original plaintiffs by preferring an appeal, being Civil Appeal No.201 of 1984. The appellate Bench dismissed the said appeal by its order dated 23rd January, 1995. Accordingly, the order of the trial court regarding dismissal of the suit was confirmed by the appellate Bench. The aforesaid order of the appellate Bench is challenged in this Revision Application.

5. At the time of hearing of this Revision Application, party-in-person, namely, Mr. Gulammohmed Musabhai, who is one of the petitioners, appeared before the Court and argued the matter. On behalf of the respondents, learned Advocate Mr. Dastoor has argued. I have heard both the parties and I have also gone through the documentary evidence on the record.

6. It was argued by the party-in-person Mr. Gulammohmed Musabhai that the disputed property belongs to the plaintiffs and the Corporation, by mistake, has shown the aforesaid property as belonging to the Corporation in the City Survey record. According to him, so far as the disputed property is concerned, it is part of Survey No. 27 and as the plaintiff was not in arrears of tax amount, there was no question of the Corporation auctioning the said property. He further submitted that whatever may be the observations at Exhibit 28, i.e. Assessment Order of the Corporation, the entry is wrongly shown therein, where Ahmedabad Municipal Corporation is shown as the owner of the property. At this stage, it is pertinent to note that auction had taken place on 11.11.1976 by Exhibit 29 and certain properties were mentioned on the left hand column of the said document. The description of the property was shown as Revenue Survey Nos. 27, 27/37/1 to 27/160/64, 143 and 143/66. On the basis of the said auction, in City Survey, the property was shown in the name of Corporation, which had purchased the property in auction. Whether the auction was legal or not or whether the Corporation could have purchased the property for token sum of Rs. 1/- from the original plaintiff are not questions, which are required to be decided in this Civil Revision Application. The next question which is relevant is whether the original plaintiffs had any interest over the suit property when the suit was filed. It is pertinent to note that in the plaint, the plaintiffs have mentioned the suit property as Revenue Survey No. 27. No further bifurcation is given regarding the said number in the plaint. The document Exhibit 28 shows that the property in question belongs to the Ahmedabad Municipal Corporation and the name of the respondent No. 1 is shown as occupier. Nowhere the name of the present plaintiff appears in the said document. It seems by Exhibit 30, some rectification was made by the Corporation, as, according to the plaintiffs, some of the properties were not subjected to arrears of tax and, there was no question of auctioning. However, there is no specific mention about the suit property in the same. Not only that, all throughout, even till today, the

Corporation has treated this property as if it is a property belonging to the Corporation, because the party-in-person has fairly stated that, till today, he has not been subjected to any demand of tax by the Corporation regarding the suit property and he is not paying any taxes to the Corporation. Over and above the same, the rent of the suit property has also been paid by the defendants as Exhibit 44, which is dated 12.10.1980, shows that the property, in the name of Musabhai's Chawl, is in the occupation of defendant No.1 and he has paid the rent for a particular period. There are other receipts also on the record. Similarly, Exhibit 43 also shows that the rent has been paid on behalf of the defendants to the Corporation and the Estate Department of the Corporation has issued receipt to that effect. Therefore, if really the plaintiff was the owner of the property, there was no occasion for the Corporation to accept the rent from the defendants, treating them as the owners of the suit property. Similarly also, as per Exhibit 33, particulars have been given regarding payment of tax to the Corporation by the defendant No.1. In that view of the matter, when the original defendant No.1 had all throughout paid the rent to the Corporation itself as the owner of the suit property, it cannot be said that the courts below have committed any error of law or facts in coming to the conclusion that the plaintiff has failed to prove the ownership over the suit property. It is pertinent to note that in the proceedings under the Rent Act, the Court can only incidentally examine the question of title. However, so far as the substantive question of title is concerned, it is to be decided only by the Civil Court and not by the Rent Court. It will be open, therefore, for the plaintiffs to get a declaration from the competent Court to prove ownership over the suit property and, ultimately, if the plaintiffs are able to prove ownership, certainly, they can proceed afresh against the tenant on whatever available ground which may exist as per the Rent Act. But, when there is a serious title dispute involved and considering the aforesaid documents when the courts below have come to the conclusion that the plaintiffs had no right to file the suit, this Court, while deciding revision application, cannot take a contrary view so far as the finding of fact is concerned, especially when it cannot be said that the aforesaid finding of fact is in any way contrary to evidence or perverse. According to the plaintiff-party-in-person, the entry in the assessment register is only for the fiscal purpose and it cannot decide the question of title. He is, no doubt, true on this aspect, but this is not the only point as there are other documentary evidence on record regarding document

of auction, payment of rent directly to the Corporation by the defendant No.1, non-payment of any taxes by the original owner to the Corporation till this date. The aforesaid facts would prima facie show that the Corporation has treated itself as the owner of the suit property. In any case, the title dispute between the Corporation and the present plaintiff cannot be decided in the present proceedings and as stated earlier, it will be open for the plaintiffs to prove their title before the appropriate court, but looking to the facts and circumstances and evidence on record, it is not possible for me to interfere with the findings given by the courts below as the jurisdiction of this Court in revision is not that of appellate jurisdiction and this Court, under Section 29(2) of the Rent Act, can consider only question of law and in view of the evidence on record, it cannot be said that the courts below have committed any error of law in reaching the conclusion which they have reached.

7. In the above view of the matter, this C.R.A. is rejected. Rule discharged. No order as to costs.

28th July, 2000 (P.B. Majmudar, J.)

(apj)